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Mr. Kratzen

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest of Bid Rejection as Nonresponsive]*

FILE: B-200122

DATE: May 13, 1981

MATTER OF: Dayton Chemical Corporation

*DLG06677*

**DIGEST:**

Bid, submitted in response to total small business ~~set-aside~~ solicitation, which failed to indicate whether bidder would furnish materials manufactured or produced by small business concerns was properly rejected as nonresponsive.

Dayton Chemical Corporation (Dayton) protests the rejection of its bid and the award of contracts to Oil-Dri Corporation of America and Georgia Tennessee Mining Company under invitation for bids (IFB) 9FCC-OKE-A0249/80 issued by the General Services Administration (GSA). The IFB, a total small business set-aside, was for absorbent material and sweeping compound. GSA rejected Dayton's bid as nonresponsive because it did not contain the required representation that the goods supplied would be manufactured or produced by a small business concern. We agree that the bid was nonresponsive and, therefore, deny the protest. *DLG0667* *DLG0667* *AGC00017*

Dayton was the low bidder on several items. The IFB provided that the bidder "must agree to furnish in the performance of the contract items manufactured or produced \* \* \* by small business concerns \* \* \*." Included in the IFB were representations completed by Dayton as follows:

"The offeror represents as part of his offer that:

\* \* \* \* \*

He [x]is, [ ] is not, a small business concern. If offeror is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder [ ] will, [ ] will not, be manufactured or produced by a small business in the United States, its possessions, or Puerto Rico."

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The contracting officer noted the failure to complete the representation while abstracting the bids and, in the mistaken belief that the omission constituted a minor irregularity, requested Dayton to make the requisite representation. Dayton then certified that the supplies offered would indeed be manufactured by a small business concern. GSA, however, ultimately determined that the bid could not be accepted.

Dayton contends that, notwithstanding its failure to fully complete the small business representation, its bid was responsive because it listed Lowe's Inc., which is a small business, as the manufacturer of, and inspection point for the offered supplies. Dayton argues that because Lowe's Inc. is familiar to GSA (Lowe's was the supplier on the previous year's contract), the bid sufficiently evidenced an intent to comply with the small business requirement and was, therefore, responsive. We find this argument unpersuasive.

This Office has consistently held that where a bid on a total small business set-aside fails to establish the intention of the bidder to furnish products manufactured or produced by small business concerns, the bid is nonresponsive and the bidder is ineligible for award. Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD 149. While a small business may subcontract with a large business under a total small business set-aside contract, the small business must make a "significant contribution" to the manufacture of the goods, Fire & Technical Equipment Corp., B-191766, June 6, 1978, 78-1 CPD 415, and its obligation to do so must be apparent from the bid itself, not from information received after bid opening. See Mil-Pac, Inc., B-181717, October 8, 1974, 74-2 CPD 196; Jack Young Associates, Inc., B-195531, September 20, 1979, 79-2 CPD 207.

Dayton argues that it was apparent from the bid that it intended to obligate itself to supply goods manufactured by a small business, and it cites our holding in B-156852, June 9, 1965, in support of its assertion that its bid was responsive. In that case, two bidders failed to complete a representation that the offered supplies would be produced by a small business concern. Both bidders named Honee Bear

Canning Company, a small business, as the inspection point for the goods. We held that the omissions were not material since it was "clear that the procurement office [was] aware of the the supplier's identity, its location and its status, based on past procurements."

Generally, the bidder's commitment to furnish goods manufactured by a small business must be evidenced by the appropriate "check-off" in the representation provision quoted above. B-156852 was an unusual case in which we viewed the procuring activity as having sufficient information in the bid to conclude that the bidders had clearly committed themselves to provide goods manufactured by a small business, notwithstanding their failure to so represent by checking the appropriate box. In the instant case, however, it appears GSA could not make such a determination concerning Dayton's commitment. In this regard, GSA reports that Meridian Petroleum Company, another bidder under this IFB, also listed Lowe's Inc. as the manufacturer, but that Meridian Petroleum represented that the items offered would not be manufactured or produced by a small business. Additionally, GSA learned shortly after bid opening that it had erroneously awarded the previous year's contract to Meridian Petroleum based upon a bid which represented that a small business would not manufacture the goods and which named Lowe's Inc. as the supplier. At best, Dayton's mention of Lowes, Inc. created an ambiguity as to whether Dayton was committing itself to furnish goods from a small business manufacturer and this ambiguity required the rejection of the bid as nonresponsive. See Hawthorne Uniform Manufacturing Co., Inc., B-200363, February 5, 1981, 81-1 CPD 68.

The fact that after bid opening Dayton expeditiously corrected its omission to the apparent satisfaction of the contracting officer is of no legal significance. We have frequently held that a nonresponsive bid may not be considered for correction since to permit a bidder to make its bid responsive after bid opening would be tantamount to permitting the submission of a new bid. Atlantic Research Company, B-179641, February 25, 1974, 74-1 CPD 98. Also, the fact that the Government, as Dayton contends, would save money by awarding to Dayton does not compel a different conclusion. To allow correction

of a nonresponsive bid would undermine the integrity of the system of competitive bidding despite the immediate advantage the Government may gain by a lower price in the particular procurement. Ecological Water Projects, Inc., B-199154, September 30, 1980, 80-2 CPD 232.

The protest is denied.

*Milton J. Aorolan*

Acting Comptroller General  
of the United States